

1 **Michael J. Flynn, Mass. State Bar No.172780**

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3 *Admitted Pro Hac Vice*

Former Attorney for the Montgomery parties

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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA , RENO**

9 DENNIS MONTGOMERY, and the )  
10 MONTGOMERY FAMILY TRUST, )

3:06-CV-00056-PMP-VPC  
**BASE FILE**

11 Plaintiffs, )

12 v. )

3:06-CV-00145-PMP-VPC  
3:06-CV-0263-PMP-VPC

13 ETREPPID TECHNOLOGIES, LLC, )  
14 WARREN TREPP, and the UNITED )  
STATES DEPARTMENT OF DEFENSE, )

**NOTICE OF WITHDRAWAL OF  
MOTION FOR CONTEMPT WITHOUT  
PREJUDICE TO RENEW.**

15 Defendants. )

16 \_\_\_\_\_ )  
17 AND ALL RELATED MATTERS. )

18 TO ALL PARTIES AND ATTORNEY OF RECORD: Attorney Michael Flynn (hereinafter  
19 “Mr. Flynn”), an interested party, hereby withdraws, *without prejudice*, his motion for contempt filed  
20 April 17, 2009. (Docket #1010). Both attorney Flynn and attorney DiMare are extremely busy  
21 preparing for separate trials, and Mr. Flynn had improperly calendared for 45 days from the date of the  
22 order, not the date of the “protective order.” Attorney DiMare drafted the papers, as they state, and  
23 she believed the Montgomery parties documents were past due.

24 In fact, Ms. Garofalo certainly inferred that she also thought they were due on or about April  
25 10<sup>th</sup> because her response to Ms. DiMare’s April 7<sup>th</sup> email, Ms. Garofalo stated that she expected to  
26 have the “documents by the end of the week,” which would have been April 10<sup>th</sup>, which was consistent  
27 with the date Mr. Flynn had it calendared for.  
28

Moreover, if Ms. Garofalo simply picked up the phone or emailed and pointed this out, she would *not* have had to file anything, (docket # 1016), because the (premature) motion would have been immediately withdrawn, as Mr. Flynn is doing now. Ms. Garofalo never made any attempt to contact Mr. Flynn, and filed her motion for sanctions. Ms. Garofalo is not entitled to sanctions that she deliberately caused by her own bad faith, as she is disingenuously endeavoring to do. Since Mr. Flynn is immediately withdrawing the motion, the Court has not had to decide the motion, either. Ms. Garofalo's allegation that Mr. Flynn's filing for sanctions is a "cottage industry" is untrue. Mr. Flynn just wants to get paid, and does NOT want to be involved in this case in any way whatsoever.

Mr. Flynn reserves the right to file a new motion for contempt should the Montgomery parties not comply with the Order and timely serve ALL documents Ordered by the Court.

Respectfully submitted,

/S/ \_\_\_\_\_

Dated: April 20, 2009

Michael J. Flynn, Esq.

#### CERTIFICATE OF SERVICE

I, Michael J. Flynn, am an attorney admitted pro hac vice in the U.S.D.C. of Reno in the related civil cases, No. 3:06-CV-00056 and 3:06-CV-000145. I am over the age of 18 years and not a party to this action.

I am familiar with the practice for the collection of mail, delivery of hand-deliveries, process of facsimile, the practice of mailing, and e-filing.

On April 17, 2009, I caused the foregoing documents (Notice of Withdrawal of Motion for contempt, w/ this Certificate of Service), to be e-filed to all attorney of record in this case. I also mailed a copy to the following persons and/or entities: Ellyn Garofalo, Liner, Grode, Stein and Yankelevitz, 1100 Glendon Avenue, 14<sup>th</sup> Fl., Los Angeles, CA 90024-3503.

/S/ \_\_\_\_\_

Attorney Michael Flynn